

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	
	§	No. 4:20-CR-212
DEBRA LYNN MERCER-ERWIN (1)	§	Judge Mazzant
KAYLEIGH MOFFETT (2)	§	
CARLOS ROCHA VILLARRUTIA (5)	§	

**UNITED STATES' REQUEST FOR AN ORDER DIRECTING THE
DEFENDANTS TO PROVIDE NOTICE OF INTENT TO RAISE AN
ADVICE OF COUNSEL DEFENSE**

The United States requests that this Court instruct the defendants to provide notice of intent to pursue an advice of counsel defense.

Courts have discretion to order pretrial notice of advice of counsel defense because such defense waives the attorney-client privilege and warrants disclosing previously privileged documents to the government. Lack of pretrial disclosure could cause delay at trial. It has been noted:

An advice-of-counsel defense is complex and may raise issues requiring additional briefing before trial. Specifically, the assertion of an advice-of-counsel defense may impact the scope of discovery otherwise permitted, namely the waiver of the attorney-client privilege over certain communications and/or documents related to the advice. The complexity of the defense and the potential for discovery of otherwise privileged documents weigh heavily in favor of a pretrial notice and discovery requirement to avoid unnecessary delays during trial. Accordingly, it is appropriate to require the defendants... to provide notice and discovery should any defendant wish

to assert an advice-of counsel defense. *United States v. Hagen*, 542 F.Supp. 3d 515, (N.D. Tex. June 3, 2021) quoting *United States v. Dallmann*, 433 F. Supp. 3d 804, 810 (E.D. Va. 2020).

For the reasons stated, the United States requests that this Court issue an Order requiring the defendants to provide notice if they intend to pursue an advice of counsel defense.

Respectfully submitted,

BRIT FEATHERSTON
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/s/

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CERTIFICATE OF CONFERENCE

This is to certify that this document was delivered to counsel for defendants via electronic mail and counsel took the following positions:

Debra Mercer-Erwin – no response
Kayleigh Moffett – no response
Carlos Rocha Villaurrutia – no response

/s/

Heather Rattan

CERTIFICATE OF SERVICE

This is to certify that on April 3, 2023 this document was filed with the Clerk using the CM/ECF filing system, which will cause a copy of this document to be delivered to counsel for defendants via electronic mail.

/s/
Heather Rattan